

Assembly Bill No. 3078

CHAPTER 305

An act to amend Sections 18535, 18536, 18662, 18668, 19136, 21006, and 25106 of, to amend, repeal, and add Section 21004 of, and to add Section 19311.5 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 2008. Filed with
Secretary of State September 25, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3078, Committee on Revenue and Taxation. Taxation: tax administration: group returns: real estate withholding requirements: penalties: income apportionment.

(1) The Personal Income Tax Law provides various credits against "net taxes" to taxpayers for income taxes paid to another state on income that is taxable by that law. That law generally provides that no credit or refund is allowed after a specified period of time unless, before the expiration of that period, a claim for refund or credit is filed by the taxpayer or the Franchise Tax Board allows a credit, makes a refund, or mails a notice of proposed assessment.

This bill would permit a claim for credit or refund of an overpayment of income tax attributable to a credit allowable under the above provisions to be filed within one year from the date tax is paid to the other state or within the period provided in the franchise and income tax laws, whichever period expires later.

This bill would also declare that this act is not to be construed to change the requirements of Section 18007 of the Revenue and Taxation Code.

(2) The Katz-Harris Taxpayers' Bill of Rights Act establishes the position of Taxpayers' Rights Advocate and provides specified protections for taxpayers for purposes of, among other things, determining their correct tax liability.

This bill would, until January 1, 2012, authorize the Taxpayers' Rights Advocate to abate penalties, fees, additions to tax, or interest attributable to error of the Franchise Tax Board, as specified.

(3) The Katz-Harris Taxpayers' Bill of Rights Act requires the Franchise Tax Board to annually identify areas of recurrent taxpayer noncompliance and report its findings to the Legislature.

This bill would require the Franchise Tax Board to include in its report a summary of cases where relief was granted and to keep a public record regarding the relief granted.

(4) Existing income tax laws authorize the Franchise Tax Board to provide for the filing of a group return for electing nonresident partners, as specified. Existing law authorizes the board to provide for the filing of a group return

for electing nonresident directors of a corporation, as specified, and to adjust the income of those taxpayers to properly reflect income, as provided.

This bill would allow the board to include entities with less than 2 electing nonresident individuals, and electing individuals with more than a specified amount of California taxable income, in a group nonresident return, as provided.

(5) Existing law requires the transferee of California real property, in specified circumstances, to withhold, for income tax purposes, $3\frac{1}{3}\%$ of the sales price of the property when the property is acquired from either an individual or a corporation without a permanent place of business, as specified.

This bill would also impose those withholding requirements on a sale of California real property, as defined, by a non-California partnership, as provided, at a rate of either $3\frac{1}{3}\%$ of sales proceeds or 9.3% of gain, as specified.

(6) Existing law provides that, in the case of a sale of California real property by a non-California “S” corporation, the “S” corporation may elect the alternative withholding rate of 1.5%, based on the gain recognized by the “S” corporation on the sale, instead of the default withholding rate of $3\frac{1}{3}\%$ based on the “S” corporation’s sales proceeds.

This bill would increase the alternative withholding rate for a sale of California real property by a non-California “S” corporation to 10.8% or 12.8%, as applicable, of the gain recognized by the “S” corporation on the sale.

(7) Existing law provides that a nonresident seller of California real property pursuant to an installment agreement is not subject to withholding when payments are received by the seller in later years, unless the buyer makes an election to withhold on a payment-by-payment basis rather than on the entire sale in the year of sale.

This bill would instead require the buyer to withhold on each installment sale payment if the sale of California real property is structured as an installment sale, as provided.

This bill would also delete redundant provisions and would make clarifying changes relating to the assessment and collection of unremitted withholding.

(8) Existing law allows a seller of California real estate to make an election, pursuant to a certification made under penalty of perjury, as specified, for an alternative withholding rate based on the amount certified by the transferor, provided that the certified amount is not less than the gain required to be recognized by the seller under the Corporation Tax Law or the Personal Income Tax Law, as applicable. By modifying existing withholding requirements to include sellers that are non-California partnerships and by requiring a certification under penalty of perjury for alternative withholding from those partnerships, this bill would expand the scope of the existing crime of perjury, and would thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(9) The Personal Income Tax Law and the Corporation Tax Law impose a penalty for underpayment of an estimated income tax. Those laws also specify that a penalty shall not be imposed if, specified taxes imposed for the preceding taxable year, minus the sum of any credits against the tax, or, the tax computed under specified provisions upon the estimated income for the taxable year, minus the sum of any credits against the tax, is less than \$200, and in the case of a separate return filed by a married person, is less than \$100.

This bill would increase the amounts excluded from that penalty from \$200 to \$500, and in the case of a separate return filed by a married person, from \$100 to \$250.

(10) The Corporation Tax Law imposes taxes measured by income and, in the case of a corporation that conducts a unitary business generally requires or, in some cases, permits the members of the group to compute their tax by utilizing the “combined report” approach. Existing law provides that dividends paid by one member of a unitary group to another member of that group may be eliminated from the recipient corporation’s taxable income, provided that the dividends are paid out of earnings and profits accumulated by the payer when the payer and recipient were members of the same combined unitary group, as specified.

This bill would clarify that the dividend elimination, as provided, is allowed regardless of whether the payer and payee are taxpayer members of the California combined unitary group return, or whether the payer or payee had previously filed California tax returns, as long as the payer and payee filed as members of a comparable unitary business outside of this state when the earnings and profits from which the dividends were paid arose. This bill would declare that these changes are declaratory of existing law.

This bill would also specify that the dividend elimination provisions apply to dividends paid out of the specified income by a member of a combined unitary group to a newly formed member, as defined.

The people of the State of California do enact as follows:

SECTION 1. Section 18535 of the Revenue and Taxation Code is amended to read:

18535. (a) In lieu of electing nonresident partners filing a return pursuant to Section 18501, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for one or more electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax

rate or rates applicable to each electing partner's distributive share shall consist of the highest marginal rate or rates provided by Part 10 (commencing with Section 17001) plus, in the case of any electing nonresident partner included on the group return who would be subject to Section 17043 when filing individually, an additional tax rate of 1 percent. Except as provided in subdivision (b), no deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by the Franchise Tax Board, the partnership as agent for the electing partners shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

(b) Deductions provided by Chapter 5 (commencing with Section 17501) of Part 10, attributable to earned income of a partner derived from a partnership filing a group return on behalf of electing nonresident partners under subdivision (a), shall be allowed if the partner certifies, in the form and manner as the Franchise Tax Board may prescribe, that he or she has no earned income from any other source.

(c) This section shall also be applicable to a nonresident shareholder of a corporation which is treated as an "S" corporation under Chapter 4.5 (commencing with Section 23800) of Part 11. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "shareholder or shareholders" in lieu of "partners" and to "S" corporation in lieu of "partnership."

(d) This section shall also be applicable to a nonresident individual with a membership or economic interest in a limited liability company, registered limited liability partnership, or foreign limited liability partnership, which is classified as a partnership for California tax purposes. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "holders of a membership or economic interest" in lieu of "partners" and to "limited liability companies" in lieu of "partnerships," and "partnerships" shall include registered limited liability partnerships and foreign limited liability partnerships.

(e) The Franchise Tax Board may adjust the income of an electing nonresident taxpayer included in a group return filed under this section to properly reflect income under Part 10 (commencing with Section 17001), including Chapter 11 thereof (commencing with Section 17951), this part (commencing with Section 18401), and Part 11 (commencing with Section 23001), including Chapter 17 thereof (commencing with Section 25101).

SEC. 2. Section 18536 of the Revenue and Taxation Code is amended to read:

18536. (a) In lieu of electing nonresident directors filing a return pursuant to Section 18501, the Franchise Tax Board may, pursuant to requirements and conditions set forth in applicable forms and instructions, provide for the filing of a group return by a corporation for one or more electing nonresident individuals who receive wages, salaries, fees, or other compensation from that corporation for director services, including attendance of board of directors' meetings that take place in this state. The

tax rate or rates applicable to each director's compensation for services performed in this state shall consist of highest marginal rate or rates provided for by Part 10 (commencing with Section 17001) of Division 2 plus, in the case of any electing nonresident director included on the group return who would be subject to Section 17043 when filing individually, an additional tax rate of 1 percent and no deductions or credits shall be allowed. As required by the Franchise Tax Board, the corporation, as the agent for the electing nonresident directors, shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by, or imposed on, the electing directors.

(b) The Franchise Tax Board may adjust the income of an electing nonresident taxpayer included in a group return filed under this section to properly reflect the income under Part 10 (commencing with Section 17001) of Division 2.

SEC. 3. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state, or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person that fails to withhold from any payments any amounts required to be withheld by this section or fails to remit the taxes withheld is liable for the amount specified in Section 18668.

(e) (1) This subdivision applies to any disposition of a California real property interest by:

(A) Any person, other than either of the following:

(i) Except as otherwise provided in this subdivision, a corporation, including an entity classified for tax purposes as a corporation under Part 11 (commencing with Section 23001).

(ii) Except as otherwise provided in this subdivision, a partnership, as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of

the Internal Revenue Code, including an entity classified as a partnership for tax purposes under Part 10 (commencing with Section 17001).

(B) A corporation or partnership, if that corporation or partnership immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation or partnership has no permanent place of business in California if all of the following apply:

(i) It is not organized and existing under the laws of California.

(ii) It does not qualify with the office of the Secretary of State to transact business in California.

(iii) It does not maintain and staff a permanent office in California.

(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the California real property conveyed.

(B) If the transferor makes an election under this subparagraph, the transferee, including any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to an amount certified by the transferor in writing under penalty of perjury. The amount certified shall not be less than the gain required to be recognized under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) on the disposition of the California real property multiplied by the rate specified in either Section 23151 or Section 23186, as applicable, for transferors that are corporations, or the highest rate specified in Section 17041 for transferors other than corporations. For purposes of applying the previous sentence, the following shall apply:

(i) The highest rate specified in Section 17041 is determined without regard to any other tax rate specified under Part 10 (commencing with Section 17001) irrespective of whether the applicable statute provides that tax shall be treated as if imposed under Section 17041.

(ii) For corporations that are "S" corporations subject to the modified tax rate specified in Section 23802, the rate shall be the sum of the rate specified in subdivision (b) of Section 23802 and the highest rate specified in Section 17041, as described in clause (i).

(C) (i) The written certification required by subparagraph (B) shall be in a form, as prescribed by the Franchise Tax Board. The form shall provide as follows:

"Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

(ii) The Franchise Tax Board shall make this form available electronically on its Web site in a format that allows a transferor to complete and print the form. The Franchise Tax Board shall also provide electronic means to enable the transferor to estimate the amount of gain required to be recognized by

the transferor in the transaction. Any form or worksheet, electronic or otherwise, developed for this purpose shall provide as follows:

“Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose.”

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee is required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars (\$100,000).

(B) No transferee, other than an intermediary or an accommodator in a deferred exchange, is required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) (i) No transferee, trustee under a deed of trust, or mortgagee under a mortgage with a power of sale is required to withhold under this subdivision when the transferee has acquired California real property at a sale pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the property by a deed in lieu of foreclosure.

(ii) No transferee is required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying, under penalty of perjury, one of the following:

(i) (I) The California real property being conveyed is the seller’s or decedent’s principal residence, within the meaning of Section 121 of the Internal Revenue Code.

(II) The last use of the property being conveyed was use by the transferor as the transferor’s principal residence within the meaning of Section 121 of the Internal Revenue Code.

(ii) (I) The California real property being conveyed is being exchanged, or will be exchanged, for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of the gain not required to be recognized for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code.

(II) Subclause (I) may not apply if an exchange does not qualify for nonrecognition treatment for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code, in whole or in part, due to the failure of the transaction to comply with the provisions of Section 1031(a)(3) of the Internal Revenue Code, relating to the requirement that

property be identified and that the exchange be completed not more than 180 days after the transfer of the exchanged property.

(III) In any case where clause (ii) applies, the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in Section 1031(a)(3) of the Internal Revenue Code and thereafter remit the applicable withholding amounts determined under this subdivision in accordance with paragraph (4).

(iii) The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) The transaction will result in either a net loss or a net gain not required to be recognized for California income or franchise tax purposes.

(v) The transferor is a corporation with a permanent place of business in California.

(E) (i) In the case of any transaction otherwise subject to this subdivision that qualifies as an “installment sale,” within the meaning of Section 453(b) of the Internal Revenue Code, for California income tax purposes, the provisions of this subdivision shall be separately applied to each principal payment to be made under the terms of the installment sale agreement between the parties.

(ii) For purposes of clause (i), subparagraph (A) of paragraph (3) does not apply to each individual payment to be received under the terms of the installment sale agreement.

(4) (A) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board. Notwithstanding the foregoing, funds withheld on individual transactions by real estate escrow persons may, at the option of the real estate escrow person, be remitted by the 20th day of the month following the close of escrow for the individual transaction, or may be remitted on a monthly basis in combination with other transactions closed during that month.

(B) The transferor shall submit a copy of the written certificate and supporting documentation for the reduced withholding specified in subparagraph (B) of paragraph (2) or subparagraph (D) of paragraph (3), executed by the transferor, to the Franchise Tax Board upon request.

(5) For purposes of this subdivision, “California real property interest” means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(6) For purposes of this subdivision, “real estate escrow person” means any of the following persons involved in the real estate transaction:

(A) The person, including any attorney, escrow company, or title company, responsible for closing the transaction.

(B) If no person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(7) (A) Unless the real estate escrow person provides “assistance,” it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, “assistance” includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision or, upon request of the parties, withholding an amount under this subdivision and remitting that amount to the Franchise Tax Board.

(C) For purposes of this paragraph, “assistance” does not include providing the written notification of the withholding requirements of this subdivision.

(D) In a case where the real estate escrow person provides “assistance” in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars (\$45).

(8) For purposes of this subdivision, “sales price” means the sum of all of the following:

(A) The cash paid, or to be paid, but excluding for this purpose any stated or unstated interest or original issue discount, as determined under Sections 1271 through 1275, inclusive, of the Internal Revenue Code.

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(9) The Franchise Tax Board may prescribe, by forms, instructions, published notices, or regulations, any requirements necessary for the efficient administration of this subdivision relating to the treatment of “de minimis” amounts otherwise required under this section.

(f) Withholding is not required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors’ meeting.

(g) In the case of any payment described in subdivision (f), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

(h) (1) The amendments to this section made by Chapter 488 of the Statutes of 2002 apply to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to this section made by Chapter 488 of the Statutes of 2002 do not apply to those payments.

(i) (1) The amendments made to this section by the act adding this subdivision shall apply to dispositions of California real property interests that occur on or after January 1, 2009.

(2) In the case of any payments received on or after January 1, 2009, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2009, the amendments made to this section by the act adding this subdivision do not apply to those payments.

SEC. 4. Section 18668 of the Revenue and Taxation Code is amended to read:

18668. (a) Every person required under this article to deduct and withhold any tax is hereby made liable for that tax, to the extent provided by this section. Any amount required to be deducted and paid to the Franchise Tax Board under this article shall be considered the tax of that person. Unless it is shown that the failure is due to reasonable cause, any person who fails to withhold from any payments any amount required to be withheld under this article or who fails to transmit the withheld amounts to the Franchise Tax Board on or before the due date required by regulations is liable for the amount actually withheld, or the amount of taxes due from the taxpayer to whom the payments are made, whichever is greater, but not in excess of the amount required to be withheld.

(b) If any amount required to be withheld under this article is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19521, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) In lieu of the amount provided for in subdivision (a), unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (e) of Section 18662, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (e) of Section 18662:

(1) Five hundred dollars (\$500).

(2) Ten percent of the amount required to be withheld under subdivision (e) of Section 18662.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person is liable for the amount specified in subdivision (d), when written notification of the withholding requirements of subdivision (e) of Section 18662 is not provided to the transferee, other than a transferee that is an intermediary or accommodator in a deferred

exchange, and the California real property disposition is subject to withholding under subdivision (e) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in substantially the same form as follows:

“In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price or the amount that is specified in a written certificate executed by the transferor in the case of a disposition of California real property interest by either:

1. A seller who is an individual, trust, or estate or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. A corporate or partnership seller that has no permanent place of business in California immediately after the transfer of title to the California real property.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation or a partnership with a permanent place of business in California, OR

3. The seller, who is an individual, trust, estate, partnership, or a corporation without a permanent place of business in California executes a written certificate, under the penalty of perjury, of any of the following:

A. The California real property being conveyed is the seller’s or decedent’s principal residence, within the meaning of Section 121 of the Internal Revenue Code.

B. The last use of the property being conveyed was use by the transferor as the transferor’s principal residence within the meaning of Section 121 of the Internal Revenue Code.

C. The California real property being conveyed is or will be exchanged for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

D. The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

E. The California real property transaction will result in a loss or a net gain not required to be recognized for California income tax purposes.

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.”

(3) The real estate escrow person is not liable under this subdivision if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor’s return for the taxable year in which the disposition occurred.

(4) The real estate escrow person or transferee is not liable under paragraph (1) or subdivision (d), if the failure to withhold is the result of his or her reliance, based on good faith and on all the information of which he or she has knowledge, upon a written certificate executed by the transferor under penalty of perjury pursuant to subparagraph (D) of paragraph (3) of subdivision (e) of Section 18662.

(5) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) of Section 18662 knowingly executes a false certificate pursuant to that section is liable for twice the amount specified in subdivision (d).

(f) The amount of tax required to be deducted, withheld, and remitted under this article shall be assessed, collected, and paid upon notice and demand. Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any amount due under this article.

SEC. 5. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than five hundred dollars (\$500), except in the case of a separate return filed by a married person the amount shall be less than two hundred fifty dollars (\$250).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term “tax” means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits

against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(f) This section shall apply to a nonresident individual.

(g) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment.

(2) Notwithstanding Section 18415, this section applies to penalties imposed under this section on and after January 1, 2005.

(h) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2009.

SEC. 6. Section 19311.5 is added to the Revenue and Taxation Code, to read:

19311.5. (a) If any taxes paid to another state result in an allowable credit under Section 18001, 18002, 18003, 18004, 18005, or 18006, a claim for credit or refund of an overpayment of income tax attributable to a credit allowable under any of these sections may be filed within one year from the date tax is paid to the other state or within the period provided in Section 19306, whichever period expires later.

(b) This section shall apply to taxes paid to another state on or after January 1, 2009.

SEC. 7. Section 21004 of the Revenue and Taxation Code is amended to read:

21004. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees or problems identified by board employees. The advocate shall report directly to the executive officer of the board.

(b) The advocate or his or her designee shall give highest priority to reviewing and taking prompt and appropriate action, including staying actions where taxpayers have suffered or will suffer irreparable loss as the result of board action. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(c) (1) The advocate may review any application for relief pursuant to this subdivision and abate any penalties, fees, additions to tax, or interest assessed on a taxpayer, if it is determined by the advocate that the penalties, fees, additions to tax, or interest that have been assessed, or any part thereof, is attributable to any of the following:

(A) Erroneous action or erroneous inaction by the board in processing documents filed or payments made by taxpayers.

(B) Unreasonable delay caused by the board.

(C) Erroneous written advice that does not qualify for relief under Section 21012.

(2) Relief may be granted pursuant to this subdivision only if no significant aspect of that error or delay can be attributed to the taxpayer involved and relief is not available under any other provision of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), including any relief granted under any regulation or other administrative pronouncement of the board.

(3) (A) (i) Any relief granted pursuant to this subdivision in which the total reduction in penalties, fees, additions to tax, or interest exceeds five hundred dollars (\$500) shall be submitted to the chief counsel, for concurrence.

(ii) If the total relief granted pursuant to this subdivision, including penalties, fees, additions to tax, and interest, exceeds seven thousand five hundred dollars (\$7,500), the chief counsel shall notify the board.

(B) Whenever relief is granted under this subdivision, there shall be placed on file in the office of the executive officer of the board a public record with respect to that relief. The public record shall include the following:

- (i) The taxpayer's name.
- (ii) The total amount involved.
- (iii) The amount payable or refundable due to the error or delay.
- (iv) A summary of why the relief is warranted.

(4) A refund may be paid as a result of relief granted under this subdivision only if the applicable statute of limitations, with respect to filing a claim for refund, remains open as of the date that the basis for providing relief, as authorized in subparagraphs (A) to (C), inclusive, of paragraph (1), as reflected in a written communication received by the advocate.

(d) No other entity may participate in the grant or denial of relief pursuant to this section.

(e) On January 1 of each calendar year beginning on or after January 1, 2009, the board shall increase the amount specified in subparagraph (A) of paragraph (3) of subdivision (c) to the amount computed under this subdivision. That adjustment shall be made as follows:

(1) The Department of Industrial Relations shall transmit annually to the board the percentage change in the California Consumer Price Index, as modified for rental equivalent home ownership for all items, from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The board shall then:

(A) Compute the percentage change in the California Consumer Price Index from the later of June 2008 or June of the calendar year prior to the last increase in the amount specified in paragraph (1).

(B) Compute the inflation adjustment factor by adding 100 percent to the percentage change so computed, and converting the resulting percentage to the decimal equivalent.

(C) Multiply the amount specified in paragraph (1) for the immediately preceding calendar year, as adjusted under this subparagraph, by the inflation adjustment factor determined in subparagraph (B), and round off the resulting product to the nearest one hundred dollars (\$100).

(f) Notwithstanding any other law or rule of law, all determinations made under subdivision (c) shall not be subject to review in any administrative or judicial proceeding.

(g) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends that date.

SEC. 8. Section 21004 is added to the Revenue and Taxation Code, to read:

21004. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees. The advocate shall report directly to the executive officer of the board.

(b) The advocate or his or her designee shall give highest priority to reviewing and taking prompt and appropriate action, including staying actions where taxpayers have suffered or will suffer irreparable loss as the result of board action. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(c) This section shall become operative on January 1, 2012.

SEC. 9. Section 21006 of the Revenue and Taxation Code is amended to read:

21006. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings to the Legislature on December 1 of each year.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether professional tax preparation assistance was utilized by the taxpayer.

(F) Whether income tax or bank and corporation tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the board itself where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Personal Income Tax Law or the Corporation Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

- (1) Changes in statute or board regulations.
- (2) Improvement of training of board personnel.
- (3) Improvement of taxpayer communication and education.
- (4) Increased enforcement capabilities.

(d) The board shall include in its report a summary of cases where relief was granted pursuant to subdivision (c) of Section 21004, including the nature of the error or delay, and the steps taken by the board to remedy systemic issues that caused the error or delay.

SEC. 10. Section 25106 of the Revenue and Taxation Code is amended to read:

25106. (a) (1) In any case in which the income of a corporation is or has been determined under this chapter with reference to the income and apportionment factors of one or more other corporations with which it is doing or has done a unitary business, all dividends paid by one to another of any of those corporations shall, to the extent those dividends are paid out of the income previously described of the unitary business, be eliminated from the income of the recipient and, except for purposes of applying Section 24345, shall not be taken into account under Section 24344 or in any other manner in determining the tax of any member of the unitary group.

(2) (A) For purposes of this section, the dividends described in paragraph (1) include dividends paid out of the income previously described of the unitary business by a member of the unitary group to a corporation formed subsequent to the accrual of the income, if the recipient corporation was part of the unitary group during the period from its formation to its receipt of those dividends.

(B) The Franchise Tax Board may deny any dividend elimination for the dividends described in this paragraph if the board determines that a transaction is entered into or structured with a principal purpose of evading the tax imposed by this part.

(3) For purposes of this section, “income previously described of the unitary business” shall include income earned by members of the unitary group during taxable years when no member of the unitary group was taxable in this state to the extent that the income of the unitary group would have been determined under this chapter had any member of the corporation’s unitary group been subject to tax in this state at the time that income was earned.

(b) The Franchise Tax Board may prescribe any regulations that may be necessary or appropriate to carry out the purpose of this section, which is to prevent taxation of dividends received by a member of a unitary group where those dividends were paid from the income previously described of the unitary business by another member of the same unitary group.

SEC. 11. The amendments made by Sections 1 and 2 of this act shall apply to returns filed on or after January 1, 2010, for taxable years beginning on or after January 1, 2009.

SEC. 12. Section 19311.5 of the Revenue and Taxation Code, as added by Section 6 of this act, shall not be construed to change the requirements of Section 18007 of the Revenue and Taxation Code.

SEC. 13. The amendments made by Section 7, which amended Section 21004 of the Revenue and Taxation Code, of this act shall apply to requests for advocate consideration that are received by the advocate on or after January 1, 2009, irrespective of the tax year involved.

SEC. 14. (a) The Legislature finds and declares that the amendments made to Section 25106 of the Revenue and Taxation Code by Section 9 of this act that added and amended paragraph (1) of subdivision (a) of, and added paragraph (3) of subdivision (a) to, Section 25106 of the Revenue and Taxation Code do not constitute a change in, but are declaratory of, existing law.

(b) (1) Both subdivision (b) and paragraph (2) of subdivision (a) of Section 25106 of the Revenue and Taxation Code, added to that section by this act, shall apply to taxable years beginning on or after January 1, 2008.

(2) It is the intent of the Legislature that no inference be drawn from the addition by this act of paragraph (2) of subdivision (a) to Section 25106 of the Revenue and Taxation Code as to whether, for any taxable year beginning before January 1, 2008, dividends received by a corporation are eligible for elimination under Section 25106 of the Revenue and Taxation Code.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.